

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
CRIMINAL MINUTES
CONTINUED SENTENCING

FILED
DISTRICT COURT OF GUAM

AUG - 2 2005

MARY L.M. MORAN
CLERK OF COURT

CASE NO. CR-03-00031

DATE: 08/01/2005

HON. CONSUELO B. MARSHALL, Designated Judge, Presiding
Court Recorder: Jamie Phelps
Hearing Electronically Recorded Time: 2:21:07 - 3:11:58

Law Clerk: Dawn
Courtroom Deputy: Virginia T. Kilgore
CSO: J. McDonald

TIME: 2:21 P.M.

***** A P P E A R A N C E S *****

DEFT: VIVIEN R. BATOYON

(X) NOT PRESENT () CUSTODY (X) BOND () P.R.

ATTY : JOAQUIN C. ARRIOLA, JR.

(X) PRESENT (X) RETAINED () FPD () CJA APPOINTED

U.S. ATTORNEY: JEFFREY STRAND

AGENT:

U.S. PROBATION: MARIA CRUZ

U.S. MARSHAL: S. LUJAN

() ARGUMENT FOR A DOWNWARD DEPARTURE BY THE ___ GOVERNMENT ___ DEFENSE ___ GRANTED
COURT DEPARTS TO A LEVEL ___ FROM A LEVEL ___

() ARGUMENT FOR AN UPWARD DEPARTURE BY THE ___ GOVERNMENT ___ DEFENSE

(X) COURT STATES THE APPROPRIATE BASE OFFENSE LEVELS

Base offense level: 8 Total offense level: 10 Criminal History Category: I

NO OBJECTIONS BY THE GOVERNMENT AND DEFENSE

(X) ATTORNEY FOR DEFENDANT ADDRESSES THE COURT:

Requested the Court to impose a term of probation.

(X) DEFENDANT ADDRESSES THE COURT AND APOLOGIZES

(X) GOVERNMENT ADDRESSES THE COURT AND MAKES ITS RECOMMENDATION:

Recommended the maximum sentence allowed.

(X) LETTER(S) OF RECOMMENDATION RECEIVED BY THE COURT

NOTES/OTHER MATTERS:

Defense counsel argued his objection to Paragraph 5 in the Presentence Investigation Report. Government counsel argued his position. The Court stated that it will not consider the polygraph in imposing sentence. Defendant stated that she had no objection to being sentenced by Judge Marshall.

Defense requested the Court for Defendant to self-surrender by August 15, 2005 and for a designation to Arizona, however, if designation is not received by August 15, Defendant shall self-surrender upon receipt of designation. Defense further requested the Court to exonerate the bail upon Defendant's self-surrender. Government had no objections to the requests. GRANTED.

SENTENCE: CR-03-00031

DEFENDANT: VIVIEN R. BATOYAN

(X) DEFENDANT COMMITTED TO THE BUREAU OF PRISONS FOR A TERM OF SIX MONTHS WITH CREDIT FOR TIME SERVED (APPROXIMATELY ONE DAY).

(X) DEFENDANT SHALL SURRENDER TO THE U.S. MARSHAL OFFICE ON AUGUST 15, 2005 BY 12 NOON. IF DESIGNATION IS NOT RECEIVED BY AUGUST 15, 2005, DEFENDANT SHALL SURRENDER AS NOTIFIED BY THE U.S. MARSHAL OFFICE.

(X) COURT RECOMMENDATION TO THE BUREAU OF PRISONS AT ARIZONA.

(X) UPON RELEASE FROM IMPRISONMENT, DEFENDANT IS PLACED ON SUPERVISED RELEASE FOR A TERM OF SIX YEARS.

THE TERM OF SUPERVISED RELEASE WILL INCLUDE THE FOLLOWING CONDITIONS:

1. DEFENDANT SHALL NOT COMMIT ANY FEDERAL, STATE OR LOCAL CRIME.
2. DEFENDANT SHALL NOT UNLAWFULLY POSSESS A CONTROLLED SUBSTANCE AND SHALL REFRAIN FROM ANY UNLAWFUL USE OF A CONTROLLED SUBSTANCE. SHE SHALL SUBMIT TO ONE DRUG TEST WITHIN 15 DAYS OF RELEASE FROM IMPRISONMENT AND AT LEAST TWO PERIODIC DRUG TESTS THEREAFTER FOR USE OF A CONTROLLED SUBSTANCE.
3. DEFENDANT SHALL SUBMIT TO THE COLLECTION OF A DNA SAMPLE AT THE DIRECTION OF THE U.S. PROBATION OFFICE.
4. DEFENDANT SHALL COMPLY WITH THE STANDARD CONDITIONS OF SUPERVISED RELEASE AS SET FORTH BY THE U.S. SENTENCING COMMISSION.
5. DEFENDANT SHALL BE PROHIBITED FROM POSSESSING A FIREARM OR OTHER DANGEROUS WEAPON.
6. DEFENDANT SHALL PERFORM 1,000 HOURS OF COMMUNITY SERVICE UNDER THE DIRECTION OF THE U.S. PROBATION OFFICE.

IT IS FURTHER ORDERED THAT THE DEFENDANT PAY TO THE UNITED STATES A SPECIAL ASSESSMENT FEE OF \$100.00 TO BE PAID IMMEDIATELY AFTER SENTENCING.

PURSUANT TO SECTION 5E1.2(f) OF THE GUIDELINE RANGE, ALL FINES ARE WAIVED SINCE IT HAS BEEN DETERMINED THAT THE DEFENDANT DOES NOT HAVE THE ABILITY TO PAY.

COURT STATES THE JUSTIFICATION OF SENTENCE IMPOSED. DEFENDANT ADVISED OF HER APPEAL RIGHTS.

RECEIVED
JUL 21 2005
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